

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FEDEX CORPORATION
and SUBSIDIARIES

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Civil Case No. 2:20-cv-02794
The Honorable Samuel H. Mays, Jr.

**FEDEX'S MOTION FOR LEAVE TO FILE A REPLY TO
THE GOVERNMENT'S RESPONSE IN OPPOSITION TO
FEDEX'S MOTION FOR JUDGEMENT**

Under Local Rule 7.2(c), FedEx Corporation & Subsidiaries respectfully moves for leave of Court to file a reply to the Government's Response in Opposition to FedEx's Motion for Judgment. That Reply is lodged concurrently with this motion.

In support thereof, FedEx respectfully states:

1. On March 8, 2024, FedEx moved this Court under Federal Rule of Civil Procedure 58(d) to enter a judgment that FedEx is entitled to a refund of \$87,908 for its tax year ended May 31, 2018 (“FY18”) and \$84,566,941 for its tax year ended May 31, 2019 (“FY19”), including any statutory interest, as provided by law, applied to each overpayment of tax.
2. On March 12, 2024, the government moved this Court to extend its deadline to respond to the motion for judgment until April 12, 2024.
3. On March 14, 2024, FedEx responded in opposition to the government’s March 12, 2024 motion for an extension of time.
4. On March 15, 2024, this Court granted the government’s motion and extended the deadline to respond to April 12, 2024.

5. On April 12, 2024, the government responded to FedEx's March 8, 2024 motion for judgment (the "Response").

6. In its Response, the government mischaracterizes the substance of FedEx's motion, the facts and applicable law, and the government's own regulations.

7. FedEx's Reply will aid the Court in understanding the parties' positions and provide clarity regarding the applicable law.

8. Oral argument on May 1, 2024, will provide the Court an opportunity to examine the parties' substantive and procedural arguments. Accordingly, FedEx also requests oral argument during the May 1, 2024 status conference.

9. The government objects to the granting of this motion. *See* Attachment 1.

Respectfully submitted,

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/s/ Joseph B. Judkins
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Attorneys for Plaintiff, FedEx

Dated: April 19, 2024

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2024, I served a copy of the foregoing document by filing it through the Court's electronic filing (CM/ECF) system, which will send an electronic copy to all counsel of record.

/s/ Joseph B. Judkins

JOSEPH B. JUDKINS

Attorney for Plaintiff, FedEx

CERTIFICATE OF BY COUNSEL
PURSUANT TO LOCAL RULE 7.2(A)(1)(B)

Pursuant to Local Rule 7.2(a)(1)(B), the undersigned certifies that on April 17, 2024, counsel for the parties last conferred by email to discuss FedEx's Motion for Leave to File a Reply to the Government's Response in Opposition to FedEx's Motion for Judgment filed on March 8, 2024. On behalf of plaintiff, Joseph B. Judkins, George M. Clarke, and Cameron C. Reilly of Baker & McKenzie were included in the email exchange (Attachment 1). On behalf of defendant, Kyle L. Bishop and Robert J. Atras of the United States Department of Justice, Tax Division, and Jan M. Geht of the Internal Revenue Service, Office of Chief Counsel were included in the email exchange. Defendant opposes this Motion.

/s/ Joseph B. Judkins
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Dated: April 19, 2024

Attorney for Plaintiff, FedEx

From: Bishop, Kyle L. (TAX) <Kyle.L.Bishop@usdoj.gov>
Sent: Wednesday, April 17, 2024 4:59 PM
To: Judkins, Joseph B; Geht Jan M; Atras, Robert J. (TAX)
Cc: Clarke, George M; Reilly, Cameron
Subject: [EXTERNAL] RE: FedEx v. United States

Jud,

We're willing to consent to this motion – and would in fact join it – if FedEx will concurrently move the Court to convert the substantive motion to one under Rule 56. This would create judicial efficiencies by allowing the Court to avoid having to wade through the procedural thorns currently posed by FedEx's Rule 58(d) motion.

But if FedEx is unwilling to do so, then we do not understand (and the below email doesn't illuminate) why FedEx feels a need to file a reply brief, which is normally not permitted by the Local Rules. Given FedEx's purported interest in having this case decided speedily, additional filings will only hinder moving things to a resolution. Accordingly, to spare the resources of the Court and the government (as well as FedEx), we would oppose.

Best,

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From: Judkins, Joseph B <joseph.judkins@bakermckenzie.com>
Sent: Wednesday, April 17, 2024 4:40 PM
To: Bishop, Kyle L. (TAX) <Kyle.L.Bishop@usdoj.gov>; Geht Jan M <Jan.M.Geht@IRSCOUNSEL.TREAS.GOV>; Atras, Robert J. (TAX) <Robert.J.Atras@usdoj.gov>
Cc: Clarke, George M <george.clarke@bakermckenzie.com>; Reilly, Cameron <Cameron.Reilly@bakermckenzie.com>
Subject: [EXTERNAL] FedEx v. United States

Good afternoon, everyone. We plan to ask the Court for leave to file a reply to the response to the motion for judgment. Please let us know whether you object. Thank you.

Best regards,
Jud

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